

## **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

### **#05-297 (SWMB)**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from May 1, 2006 through May 31, 2006, on IDEM's draft rule language. IDEM received comments from the following party:

Metalworking Lubricants Company (MLC)

Please note that MLC sent in a dual response dated May 26, 2006, to an April 17, 2006 letter from IDEM regarding their September 14, 2005 determination on a solid waste processing facility permit, as well as, comments on the second notice of comment period and draft rule #05-297. IDEM will respond separately to MLC regarding their permit. Following is a summary of the comments received on the rulemaking and IDEM's responses thereto.

*Comment:* MLC disagrees with IDEM's stance that consolidation of permits cannot be attained as authorized and extolled by statute at IC 13-15-2-2, but does agree that IDEM does not have the authority to amend or extend the statutory definition of "solid waste processing facility" as amended by the legislature. However, the terms "solidification" or "solid waste solidification facility" are not defined by the statute, nor is the scope of the regulatory rule or exclusions to govern such operations established or dictated by either the legislative amendment or the enabling statute (other than to exclude permitted landfills). MLC believes that IDEM lacks the authority to promulgate these rules in the manner it is doing so. IDEM's actions are contrary to law and an ultra vires act. (MLC)

*Response:* In its responses to comments from the first comment period (29 IR 2714), IDEM explained specifically why the commenter's current hazardous waste facility permit and a solid waste processing permit could not be consolidated. IC 13-15-2-2 (4) states that the solid waste management board "...may adopt rules" allowing IDEM to consolidate environmental requirements into one permit that would otherwise be included in more than one permit. IDEM does not see this provision as a special legislative "exalting" of permit consolidation as MLC would portray, and again points out that these two permits involve two discrete sets of activities being regulated and two sets of regulatory standards. To address MLC's characterization of the promulgation of these rules as "ultra vires and contrary to law, IDEM's authority to promulgate these rule amendments (including defining the term "solidification") is based on the solid waste management board's long-standing authority to adopt rules to regulate solid waste, and to adopt rules prescribing procedures for administering permits (IC 13-19-3-1 and IC 13-14-8-7).

*Comment:* MLC notes that few standards exist or have yet been proposed particular to solid waste solidification in response to the legislative amendment. It is a problem for MLC that no specific standards exist in the proposed rule as to the technical criteria for the construction and operation of solidification facilities. The term “solidification” itself remains undefined, and the only specific new standard for solidification facilities proposed appears to be for a sixteen (16) foot square sign for facility identification at 329 IAC 11-13-3 that is, in fact, a superfluous requirement that provides no health protection or environmental benefits, particularly at a facility that does not directly service the public. (MLC)

*Response:* The purpose of the rulemaking is to amend the solid waste processing facility definition to be consistent with the 2005 legislation. IDEM proposes to define “solidification” in the draft rule. The “solidification” is defined in the revised rule under 329 IAC 11-2-38.6. Given the variety of ways that wastes may be legitimately solidified, IDEM did not want to dictate a specific approach. The primary concern is that the wastes are managed in a manner that does not adversely impact human health or the environment.